IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

APPEAL NO. 537 OF 2004
IN
ARBITRATION PETITION NO. 236 OF 2003

Mohan Goldwater Breweries Limited — Appellants

vs.

Shaw Wallace & Company Limited — Respondents

Mr.Chetan Kapadia i/b. M/s. IKC Law Associates for the appellants.

Mr. F.Divetre, senior counsel with Mr.K.Shroff i/b.
Mr. Mustafa Motiwala for the respondents.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 30th August 2004

P.C.

Heard Mr.Chetan Kapadia, the learned counsel for the appellants and Mr.F. Divetre, the learned senior counsel for the respondents.

2. The learned counsel for the appellants firstly submitted that at the time the arbitration petition was taken up for hearing, the counsel for the appellants (counsel for the respondents therein) could not appear and an opportunity be given to the present appellants to oppose the arbitration petition before the learned Single Judge.

3. We are unable to accede to the request of the learned counsel for the appellants. The affidavit of the advocate who was to appear in opposition to the arbitration petition indicating the reasons for absence has not been filed. Moreover the present appellants did file reply affidavit and the learned Single Judge took into the consideration the reply affidavit before passing the impugned order.

4. In the reply affidavit the present appellants interalia stated thus:

> "The Malt Manufacturer Pvt. Ltd., Alwar have also filed a Recovery Suit in the District Court at Alwar, Rajasthan making a claim of Rs.29,67,0811.00 together with interest thereupon against the branded beer of the petitioners under the said Agreement. As the Respondents were cornered from all sides and as their senior Directors and Chairman were being summoned by the Hon'ble Courts the Respondents had settled the Criminal Case filed by the Malt Company (India) Ltd., by issuing 15 post dated cheques under a Settlement Agreement dated 29th May 2003. However, thereafter the papers and proceedings of the present Arbitration Petition were served upon the Respondents on or about 20.6.2003 and therefore as the petitioners had made a statement in the said petition of having paid the various suppliers who had also simultaneously filed Recovery Suits against the Respondents as aforesaid, the Respondents informed the MCIL not to deposit the said post dated cheques into the bank as they would now directly pay the petitioners in the pending Arbitration Petition herein."

5. It would be thus seen that in the recovery suit filed by one of the parties viz. M/s. Malt Manufacturer (India) Limited to whom the post dated cheques were issued by the present appellants, the present appellants informed not to deposit the said post dated cheques as they decided to pay to the present respondents directly since the arbitration petition has been filed by the present respondent. In other words for the purposes of the arbitration petition the appellants were willing to pay the due amount to the present respondents. In view thereof, the order passed by the learned Single Judge cannot be faulted.

6. As regards the argument advanced by the learned counsel for the appellants that the appellants had counter claim, it seems that for the first time in the reply affidavit counter claim is raised. In any case the appellants, if advised may raise counter claim before the arbitrator but in view of the fact that there is no serious dispute to the claim of the respondents and the fact that the appellants were intending to dispose of its properties to defeat or delay the payment of the respondent's claims, the impugned order does not call for any interference.

7. Appeal is, accordingly, dismissed in limine.

8. Further time of four weeks is granted to the appellants for compliance of the impugned order.

(R.M. LODHA, J.)

(J.P. DEVADHAR,J.)